

### **REMARKS/ARGUMENTS**

The Applicant has carefully considered this application in connection with the Examiner's Action and respectfully requests reconsideration of this application in view of the foregoing amendment and the following remarks.

The Applicant originally submitted Claims 1-25 in the application. The Applicant has amended Claims 1 and 13. No claims have been canceled or added. Accordingly, Claims 1-25 are currently pending in the application.

#### **I. Rejection of Claims 1-6, 10-18 and 22-25 under 35 U.S.C. §102**

The Examiner has rejected Claims 1-6, 10-18 and 22-25 under 35 U.S.C. §102(b) as being anticipated by a patent application filed by Xiang Zhang, U.S. Patent Application Publication No. 20010029263A1. As the Examiner is no doubt aware, anticipation requires that each and every element of the claimed invention be disclosed in a single prior art reference; the disclosed elements must either be disclosed expressly or inherently and must be arranged as in the rejected claims.

Zhang discloses a mobile station monitoring system that has a maintenance task module to accumulate performance data reported within a mobile station, a transmission conduit for transmitting accumulated performance data to a central location, and a central receiver at the central location that receives and deciphers the transmitted accumulated performance data. Zhang also describes the mobile station having a maintenance task module which accumulates the performance data reported within the mobile station. (Abstract).

Generally speaking, Zhang provides for an automatic mobile station system/performance monitoring and error reporting system and method for sampling and automatically recording error and performance data of a mobile station. While the mobile station is being used, internal error messages and performance data are stored and, when either a predetermined amount of time has passed, a predetermined number of errors have occurred and been accumulated, or a particular fatal error has occurred, transmitted to a service provider. The material can be transmitted when the mobile unit is being powered or with other data in an unused portion of the signal. Zhang also provides for the data to be encrypted and for the data to be transmitted a number of times in succession in case errors occur during transmission. (Para. 0013).

However, Zhang does not describe or disclose a method or apparatus for ascertaining the state of a mobile communication apparatus by using a subscriber information module (SIM) card for collecting data on at least one of the individual components and procedures embedded within the mobile communications apparatus. Therefore, Zhang does not disclose each and every element of the claimed invention and as such, is not an anticipating reference with respect to independent Claims 1 and 13. Because Claims 2-6, 10-12, 14-18 and 22-25 are each respectively dependent upon either independent Claim 1 or on independent Claim 13, Zhang also cannot be an anticipating reference for Claims 2-6, 10-12, 14-18 and 22-25. Accordingly, the Applicant respectfully requests the Examiner to withdraw the §102 rejection with respect to these claims.

## **II. Rejection of Claims 7-9 and 19-21 under 35 U.S.C. §103**

The Examiner has rejected Claims 7-9 and 19-21 under 35 U.S.C. §103(a) as being unpatentable over Zhang in view of a patent application filed by Tommi Raivisto, *et al.*, U.S. Patent Application Publication No. 20040075675A1. As the Examiner is no doubt aware, determination of obviousness requires consideration of the invention considered as a whole; the inquiry is not whether each element exists in the prior art, but whether the prior art made obvious the invention as a whole. Furthermore, there must be some suggestion or teaching in the art that would motivate one of ordinary skill in the art to arrive at the claimed invention; a reference that teaches away from a claimed invention strongly indicates nonobviousness.

Moreover, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure.

As noted above, Zhang does not describe or disclose a method or apparatus for ascertaining the state of a mobile communication apparatus by using a subscriber information module (SIM) card for collecting data on at least one of the individual components and procedures embedded within the mobile communications apparatus. Raivisto does not overcome the shortcoming of Zhang. Raivisto describes a system for facilitating the provisioning of services and

the execution of those services at mobile terminals. (Abstract). Raivisto provides for a system that has a provisioning device used to provide a list of services and a mobile terminal that is coupled thereto. (Para. 0014). However, Raivisto does not describe or disclose a method or apparatus for ascertaining the state of a mobile communication apparatus by using a subscriber information module (SIM) card for collecting data on at least one of the individual components and procedures embedded within the mobile terminal. Zhang, individually or in combination with Raivisto, thus fails to teach or suggest the invention recited in independent Claims 1 and 13 and their dependent claims, when considered as a whole. Claims 7-9 and 19-21 are therefore not obvious in view of Zhang and Raivisto.

In view of the foregoing remarks, the cited references do not support the Examiner's rejection of Claims 7-9 and 19-21 under 35 U.S.C. §103(a). The Applicant therefore respectfully requests the Examiner withdraw the rejection.

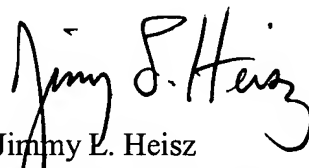
#### IV. Conclusion

In view of the foregoing amendment and remarks, the Applicant now sees all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicits a Notice of Allowance for Claims 1-25.

The Applicant requests the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

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